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Before the

Federal Communications Commission

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF U S WEST WIRELESS, LLC

U S WEST Wireless, LLC ("U S WEST") hereby comments on the Report of CTIA, PCIA, APCO, NENA, and NASNA ("Phase I Report") regarding the status of "Phase I" wireless enhanced 911 ("E-911") deployment.¹ As discussed herein, the weight of the evidence discussed in the Phase I Report, and U S WEST's experience with Phase I deployment, support retention of the Section 20.18(f) cost recovery requirement for E-911. The Commission should also clarify that PSAPs may not impose Phase I transmission technologies on carriers, and should reject arguments that states and counties may impose E-911 requirements on CMRS providers in the absence of a cost recovery mechanism.

¹ See Public Notice, *Wireless Telecommunications Bureau Requests Comment on Wireless E911 Report Filed by CTIA, PCIA, APCO, NENA, and NASNA on August 9, 1999*, CC Docket No. 94-102, DA 99-1627 (WTB rel. Aug. 16, 1999); *Public Notice, Commission Seeks to Facilitate Wireless E911 Implementation and Requests a Report*, CC Docket No. 94-102, FCC 99-132 (rel. June 9, 1999) ("Public Notice").

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DISCUSSION

I. THE COMMISSION SHOULD RETAIN THE E-911 COST RECOVERY REQUIREMENT AND CLARIFY THAT CARRIERS MAY SELECT THE PHASE I TRANSMISSION TECHNOLOGY OF THEIR CHOICE

A. The Original Basis for the Cost Recovery Requirement Remains Valid and U S WEST Has Successfully Deployed Phase I Where Cost Recovery Mechanisms Exist

In discussing the basis for its adoption of the cost recovery requirement, the Commission noted that:

No party disputes the fundamental notion that carriers must be able to recover their costs of providing E911 services. Nor is there any evidence of state or local officials attempting to prevent a carrier from doing so. To the contrary, carriers and government officials uniformly recognize (1) that resolving cost recovery issues is a prerequisite to E911 deployment, and (2) that carriers should not be required to provide E911 capability unless a PSAP is capable of receiving the associated data elements.²

Doing away with the cost recovery prerequisite of Section 20.18(f) does not do away with the original basis for the Commission's rules. Carriers' and PSAPs' undisputed need to recover the costs of E-911 deployment remains valid today. Moreover, the weight of the evidence discussed in the Phase I Report, including separate statements submitted by NENA and NASNA, indicates that progress has been made in Phase I deployment, and that eliminating the cost recovery requirement with APCO's "bill and keep" proposal will undermine deployment of Phase I and Phase II E-911 services nationwide, both with respect to future deployment and progress that carriers and PSAPs have already made.

² *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 94-102, 11 FCC Rcd. 18676, 18719-18722 (1996).

U S WEST has already made significant progress towards Phase I deployment in the markets in which it has launched service. U S WEST is a relatively new entrant that has initiated broadband PCS service in 5 states. U S WEST has implemented (or is in the process of implementing) Phase I service in every jurisdiction in which the three E-911 prerequisites -- PSAP request, PSAP capability, and implementation of a cost recovery mechanism -- have been met. Further, even in states where the requirements have not been met, U S WEST is actively participating in legislative advocacy or deployment efforts relating to Phase I services.

To confirm, in each of U S WEST's states that have implemented a cost recovery mechanism -- particularly Oregon, Colorado, and Minnesota -- U S WEST has deployed or is successfully deploying Phase I service. In Colorado, U S WEST has deployed Phase I in 4 counties, and is currently deploying service in 8 additional counties. While contractual issues have occasionally arisen in Colorado, to date these have generally been minor and easily resolved. In Minnesota, U S WEST has deployed Phase I in the metropolitan Twin Cities area and the service is in the process of being deployed in the remaining areas of the state served by U S WEST. (As discussed below, however, a technology choice issue unnecessarily delayed Phase I deployment in Minnesota. While this matter delayed service provision in Minnesota, at least for now it has been resolved and, as noted above, Phase I deployment is proceeding.) Finally, Oregon Emergency Management has requested Phase I service on behalf of PSAPs, and U S WEST has proceeded with Phase I implementation and testing while the remaining contractual issues are being resolved.

In the other states in which U S WEST has launched PCS service, U S WEST is actively working with interested PSAPs both in actual Phase I implementation and/or state-level

legislative efforts to implement cost recovery mechanisms. In Arizona, for example, a \$0.10 monthly subscriber surcharge is imposed on wireless customers, but these funds are not dedicated to E-911 costs and are insufficient to fund E-911 deployment. Notwithstanding the absence of a statewide cost recovery mechanism, U S WEST is working with Pima County, Arizona, which has separately obtained funding for Phase I deployment, to implement Phase I service in that jurisdiction. In Washington, which also has not yet adopted a cost recovery mechanism, U S WEST has participated actively with other carriers and PSAPs to advocate legislation to provide for carrier and PSAP cost recovery. Notwithstanding the state legislature's failure to enact cost recovery legislation (*see* Section II *infra*), U S WEST is cooperating closely to achieve Phase I deployment with King County, the most populous county in the state. In addition, U S WEST has also conducted Phase II testing with King County.

U S WEST's experience indicates that Phase I is, in fact, deployed or being deployed where states and/or PSAPs have met the E-911 requirements. U S WEST believes that the cost recovery mechanism is important and the process is now working as intended. Cooperation between carriers and PSAPs remains essential, however. Any change to the rules at this late date will cause further delay, and may in fact compromise implementation. The cost recovery requirement should thus be retained.

Finally, it is important for the Commission to recognize that adoption of APCO's so-called "bill and keep" proposal would constitute a fundamental modification of Section 20.18(f). Forcing wireless carriers to absorb the very real costs associated with implementing the Commission's E-911 requirements would, in effect, deny them any cost recovery mechanism. Clearly, such an outcome would represent a fundamental change in the rules more than two years

after the Phase I compliance effective date. The Commission has no authority to eliminate the cost-recovery prerequisite of Section 20.18(f) without first conducting a rulemaking proceeding to consider the issue.

B. The Commission Should Clarify that PSAPs May Not Mandate Particular Phase I Transmission Technologies

U S WEST's experience in Minnesota demonstrates that the Commission should further clarify that PSAPs may not impose a particular Phase I transmission technology choice on carriers. Carriers must retain the flexibility to choose technologies most compatible for their networks. In Minnesota, because the Department of Administration did not want to upgrade PSAP equipment to support an SS7 class of service, it insisted on a Feature Group D class of service with a wireless interface device. The interface device is inefficient, however, as it would result in a call completion delay, and would not serve as a platform for Phase II deployment. Thus, the technology choice made would not support public safety requirements and carrier needs. This matter was resolved, but only after unnecessary delay.

In sum, as the Commission acknowledged, it is "reasonable that carriers may want to choose one technology for the transmission of their Phase I data in order to take into account a systemwide application in the interest of cost efficiency and effectiveness."³ Allowing PSAPs to impose state-by-state or county-by-county technical requirements will hinder, not promote, Phase I deployment.

³ Public Notice at 6.

II. THE COMMISSION SHOULD REJECT THE STATE OF WASHINGTON'S ARGUMENTS THAT STATES MAY IMPOSE E-911 REQUIREMENTS ON CARRIERS WITHOUT COST RECOVERY MECHANISMS IN PLACE

In 1994, the Washington legislature enacted a statute which requires CMRS carriers to provide ANI capability to PSAPs without cost recovery. In its comments, the King County E-911 Program ("King County") notes that carriers and state and local government officials differ strongly as to the effectiveness of this requirement in light of the Commission's E-911 cost recovery rules.⁴ King County further asserts that "this issue remains unresolved in Washington State, and has been one of the factors which has delayed the implementation of Phase I service."⁵

U S WEST agrees with King County that the impasse over this issue has delayed Phase I deployment. U S WEST believes, however, that the state's ANI requirement is clearly

⁴ King County cites to the Washington State Department of Revenue Study regarding E-911 funding, contending that "[a]s a result of the carriers not providing actual cost data, our efforts at the State legislature earlier this year to establish a funding mechanism for wireless E911 service were unsuccessful." King County Comments at 4-5. U S WEST only recently entered this market, and was not part of the study cited. While U S WEST's experience with King County has generally been a constructive and cooperative one, U S WEST submits that state legislators' concerns for the political implications of tax increases, and the amount of the tax to be set aside for PSAP funding were other serious points of contention that undermined legislative efforts. Nevertheless, for its part, U S WEST *has* provided relevant cost data to inquiring counties, including non-recurring, recurring, and facilities-based costs to King County itself.

⁵ King County Comments at 3. U S WEST notes that it was served a copy of a petition for declaratory ruling submitted to the Wireless Telecommunications Bureau by the Attorney General of Washington ("Washington AG") regarding "whether wireless carriers can demand payment for PSAP services prior to their being made available to local jurisdictions" and "whether [the Washington ANI statute] falls outside the preemption of 47 U.S.C. § 332(c)(A)." While the Washington AG's petition raises some issues not addressed by the Phase I Report or the Public Notices seeking comment on the Phase I Report, it also provides no sound basis for its position that the Commission's rules do not preempt the Washington ANI statute. U S WEST reserves the right to comment further on the Washington AG's petition.

preempted by the Commission's rules. Section 20.18(f) of the Commission's rules provides that the E-911 requirements "shall be applicable *only if* the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, *and a mechanism for recovering the costs of the service is in place.*"⁶ In short, Washington state law requires carriers to provide ANI without cost recovery; Commission rules require carriers to provide ANI only if a cost recovery mechanism is in place.

It is difficult to imagine a situation in which a state requirement is more clearly inconsistent with a Commission rule. In the *First Report and Order* in this proceeding, the Commission determined that "state actions that are incompatible with the policies and rules adopted in this Order are subject to preemption."⁷ Preemption here is clearly required pursuant to the *E911 First Report and Order* and for the Commission to fulfill its objective of "fulfill[ing] our statutory [Section 151] mandate of 'promoting safety of life and property' . . . by facilitating the deployment of E911 capabilities *to the maximum reasonable extent* throughout the Nation."⁸

CONCLUSION

For the foregoing reasons, the Commission should retain the cost recovery requirement of Section 20.18(f) of the rules and clarify that PSAPs may not impose particular Phase I

⁶ 47 C.F.R. § 20.18(f) (emphasis added).

⁷ *E911 First Report and Order*, 11 FCC Rcd. at 18730 ¶ 104.

⁸ *Id.* at 18729-730 (emphasis added).

transmission technologies on CMRS providers. The Commission should also reject Washington state arguments that the state may impose Phase I ANI requirements on carriers in the absence of a cost recovery mechanism.

Respectfully submitted,

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